

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:21-cv-00110-MR-WCM

DONNA GARRETT )  
)  
Plaintiff, )  
)  
v. )  
)  
DR. DON TOMAS, in his personal )  
and official capacity as President )  
of Southwestern Community )  
College; DR. THOM BROOKS, in )  
his personal capacity and official )  
capacity as Executive Vice )  
President of Instruction and )  
Student Services of Southwestern )  
Community College; DR. MITCH )  
FISCHER in his personal capacity )  
and official capacity as Dean of )  
Health Science of Southwestern )  
Community College; WENDY )  
BUCHANAN, in her personal )  
capacity and official capacity )  
as Director of the Nursing Program )  
of Southwestern Community )  
College; and THE TRUSTEES OF )  
SOUTHWESTERN COMMUNITY )  
COLLEGE, )  
)  
Defendants. )  
\_\_\_\_\_ )

ORDER

This matter is before the Court on Defendants' Motion to Dismiss (Doc. 3), which has been referred to the undersigned pursuant to 28 U.S.C. § 636 for the entry of a recommendation.

The undersigned has reviewed the parties' briefing relative to the Motion to Dismiss, as well as relevant authorities, and finds that a more thorough discussion of certain issues may aid in the decisional process. Specifically, the parties will be directed to address the following:

1. The extent to which courts have made affirmative findings regarding the existence of a constitutionally protected right to continued enrollment at an institution of higher education for purposes of a claim alleging violation of the due process requirements of the North Carolina Constitution or the Constitution of the United States, and noting whether such decisions have been rendered at the motion to dismiss stage, summary judgment, or at trial.
2. Whether a constitutionally protected right to continued enrollment at an institution of higher education was "clearly established" at all times relevant to this matter, for purposes of Defendants' qualified immunity defense. See e.g., Doe v. White, 440 F. Supp. 3d 1074 (N.D. Cal. 2020), *aff'd*, No. 20-15450, 2021 WL 2206459 (9th Cir. June 1, 2021).

Each side shall submit a supplemental brief on these topics, with each brief not to exceed 10 pages in length, on or before July 16, 2021.

It is so ordered.

Signed: June 30, 2021

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf  
United States Magistrate Judge

